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Paper for the House Committee meeting on 10 June 2011

**Report of the Subcommittee on Order made under Section 78B of
the Public Health and Municipal Services Ordinance**

Purpose

This paper reports on the deliberations of the Subcommittee on Order made under section 78B of the Public Health and Municipal Services Ordinance.

Background

2. Section 78B of the Public Health and Municipal Services Ordinance (Cap. 132) empowers the Director of Food and Environmental Hygiene ("DFEH") to make an order to prohibit the import and the supply of any food for the period specified in the order. Such an order may only be made if DFEH has reasonable grounds to believe that the making of the order is necessary to prevent or reduce a possibility of danger to public health or to mitigate any adverse consequence of a danger to public health. Under section 78C(3), if a section 78B order is addressed to a class of persons or all persons, the order must be published in the Gazette. Section 78B(6) provides that a section 78B order is not subsidiary legislation. Accordingly, such order is not required to be tabled before the Legislative Council ("LegCo") and is not subject to amendment by LegCo.

The Order made under Section 78B of the Public Health and Municipal Services Ordinance (Cap. 132) (G.N. (E.) 11 of 2011) ("the Order")

3. According to the LegCo Brief on the Order dated 23 March 2011 (Ref.: FHB/F/5/1/37), the Administration stated that owing to the massive earthquake and the subsequent tsunami which happened in Japan on 11 March 2011, the Daiichi nuclear power plant in Fukushima prefecture was damaged, leading to release of radioactive substances in the environment. Japanese authorities have examined the food products and announced that the radioactive substances have contaminated certain foods in the prefectures in the vicinity of the nuclear power plant, including Fukushima, Ibaraki, Tochigi and Gunma. Radiation levels hazardous to human health have been found in foods including various vegetables and milk. In addition, tests conducted by the Centre for Food Safety ("CFS") in Hong Kong on 23 March 2011 revealed that three vegetable samples imported from Chiba prefecture of Japan were detected to contain radioactive substances at a level exceeding the standards laid down by the Codex Alimentarius Commission in the Guideline Levels for Radionuclides in Foods Contaminated following a Nuclear or Radiological Emergency ("Guideline Levels").

4. On 23 March 2011, DFEH made an order under section 78B of Cap. 132 to prohibit the import into and supply within Hong Kong the following food products which are/were harvested, manufactured, processed or packed on or after 11 March 2011 from five prefectures of Japan, namely, Fukushima, Ibaraki, Tochigi, Gunma and Chiba with effect from 12:00 noon on 24 March 2011 until further notice -

- (a) all fruits and vegetables;
- (b) all milk, milk beverages and dried milk; and
- (c) all chilled or frozen game, meat and poultry, all poultry eggs and all live, chilled or frozen aquatic products, unless accompanied by a certificate issued by the competent authority of Japan certifying that the radiation levels do not exceed the standards laid down by the Codex Alimentarius Commission in the Guideline Levels.

5. The Order was published in the Gazette on 24 March 2011 and took effect at 12:00 noon on 24 March 2011.

6. Under section 78D of Cap. 132, any person bound by the Order who contravenes a term of the Order commits an offence and is liable to a fine at level 6 (currently at \$100,000) and to imprisonment for 12 months.

The Subcommittee

7. At the House Committee meeting on 1 April 2011, Members formed a subcommittee to study the Order. The membership list of the Subcommittee is in **Appendix I**.

8. Under the chairmanship of Hon Fred LI Wah-ming, the Subcommittee has held two meetings with the Administration and met with the representatives of five organizations listed in **Appendix II**.

Deliberations of the Subcommittee

Safety of food imported from Japan

9. Members are concerned about the inspection of food imported from Japan. Members have also enquired about the measures taken by CFS to ensure the safety of food imported from Japan other than the five prefectures named in the Order. Noting that some countries have prohibited the import of food products from 12 prefectures of Japan, members have queried whether the scope of the Order is sufficient for protection of public health and whether its scope would be reviewed having regard to the latest development of the Daiichi nuclear power plant incident.

10. According to the Administration, for every food consignment from Japan, screening is conducted by hand-held survey meters for surface contamination and samples will be taken from every food consignment for examination by the Contamination Monitoring System ("CMS"). Food consignment which fails the hand-held survey meters or CMS screening will be withheld and sample will be sent to the Government Laboratory for further quantitative analysis. Since 12 March 2011, CFS has stepped up surveillance and tested the radiation level of all fresh food imported from Japan, including vegetables, fruits, meat, aquatic products, milk and milk powders. Other foodstuffs imported from Japan are also

monitored. As at noon of 26 May 2011, a total of 12 212 food samples had been tested. All results are satisfactory except the three samples tested on 23 March 2011 (paragraph 3 above refers).

11. Members have been advised that CFS held two meetings with the Expert Committee on Food Safety ("Expert Committee") between the end of March and early April 2011. The Expert Committee, which comprises overseas food experts from Australia, Mainland and Singapore as well as local experts, considers the food safety measures taken by CFS and the scope of the Order appropriate. CFS will keep in view the testing results of the samples of food imported from Japan. In the event that additional samples were detected to contain radiation levels exceeding the Guideline Levels, the Administration would consider expanding the scope of the Order to cover more food types and prefectures from which the food is exported. Members have been assured that CFS will continue to closely monitor the situation and make reference to the recommendations of international authorities, including the World Health Organization ("WHO") and the International Atomic Energy Agency ("IAEA").

Impact on the trades

12. Concern has been raised over the impact of the Order on the affected trades. Members have queried whether the affected trades have been consulted on the Order. Members have requested the Administration to consider providing financial assistance, e.g. offering special loans at preferential interest rate, giving subsidy on utilities expenses etc., to the affected trades to help them tide over the financial difficulties caused by the Daiichi nuclear power plant incident. Given the concern about radiation contamination of Japanese food, Hon Vincent FANG has requested CFS to consider issuing labels affixing onto food products confirming that they have passed the tests in order to restore public confidence in the consumption of Japanese food.

13. According to the Administration, CFS met with the importers and distributors supplying Japanese food on 14 March 2011 and briefed the trades on the Order on 23 March 2011. Since 25 March 2011, if the radiation testing results are satisfactory for the concerned food consignments, CFS will issue a letter to the relevant importer stating words of similar effect. Regarding the issuance of labels, the Administration considers that the matter should be dealt with care as it would be difficult to monitor the use of such labels. The Administration maintains close liaison with the trades and is examining how the SME Loan Guarantee Scheme could assist the affected trades.

14. The Subcommittee has agreed that the provision of financial assistance to the affected trades should be referred to the Panel on Commerce and Industry for follow-up.

15. To restore public confidence, members and the deputations received by the Subcommittee have requested the Administration to enhance its publicity on CFS's work in the testing of Japanese food products. The Administration has advised the Subcommittee that since 16 March 2011, CFS has been updating the statistics of food radiation testing and has informed the public via daily press briefing/release coordinated by the Security Bureau. The arrangements would help enhance public confidence in the consumption of Japanese food.

Manpower resources

16. Members have been advised that as part of CFS's food surveillance programme, samples of food from all sources are taken at the wholesale and retail levels for radiation testing. In response to the public concern over radiation contamination, CFS has increased the number of Japanese food samples. Priority is given to the testing of fresh foods imported from Japan. Given that the problems arising from the Daiichi nuclear power plant incident are unlikely to be resolved within a short period of time, members are concerned whether the existing manpower resources are adequate for CFS to cope with the increase in food inspection and whether its regular food surveillance programme would be affected.

17. The Administration has explained that CFS is coping with the increased workload through internal deployment and employment of temporary contract staff. The regular food surveillance work will not be compromised because of inadequate manpower. Should the need arise, additional manpower resources will be sought.

Appeal against the Order

18. Members note that under section 78G of Cap. 132, a person bound by the Order who is aggrieved by the Order may, within 28 days from becoming bound by the Order, appeal to the Municipal Service Appeal Board against the Order. Under section 78H, a person bound by the Order may apply for an amount of compensation that is just and equitable in all the circumstances of the case for losses arising as a direct result of compliance with the Order. These losses include total or partial loss of the food that is the subject of the Order and costs or expenditure actually and directly incurred. According to the Administration, no appeals or

compensation claims have been received since the coming into operation of the Order.

Revocation of the Order

19. Noting the trade's request for revocation of the Order, members have enquired about the circumstances under which the Order will be revoked. Members have been informed that IAEA has sent representatives to Japan to investigate the Daiichi nuclear power plant incident and will hold a special meeting in June 2011. The IAEA will make an initial assessment on the impact of the incident, including its impact on the environment and food chain. The Expert Committee has advised CFS to keep in view the discussion and recommendations of IAEA and WHO. Given that the radiation leakage problem has yet to be resolved and IAEA, which is an expert in the field, has yet to hold its special meeting, the Administration considers it necessary and prudent for the Order to remain in effect. The Administration will examine whether any adjustments should be made to the Order and the testing of food imported from Japan after IAEA has held its special meeting. In considering whether the Order should be revoked, the Administration will have regard to, among others, the information released by IAEA and WHO, the results of food tests conducted by the Japanese authorities and those by CFS, and the risk of radiation contamination. In the view of the Administration, it is of paramount importance to protect public health.

20. At the request of the Subcommittee, the Administration has agreed to inform LegCo of its decision to revoke the Order once it is made.

Safety of animal feed in Hong Kong

21. Hon Cyd HO is concerned about the import of potentially contaminated crops from Japan as animal feed in Hong Kong. According to the Administration, all feed used in local pig and chicken farms are imported mostly from Brazil, the United States and the Mainland. Local pig and chicken farmers do not use any feed from Japan. As regards feed for local fish farmers, most feed are imported from Guangdong, Taiwan or the European Union. There is no import of feed for local aquaculture from Japan. Notwithstanding this, the Agriculture, Fisheries and Conservation Department has advised local farmers not to buy feed from areas affected by the Daiichi nuclear power plant incident. The Administration will closely monitor the situation and take prompt action in response to the development of the nuclear power plant incident in Japan.

Follow-up action

22. The Subcommittee has agreed that the subject of the provision of financial assistance to the affected trades should be referred to the Panel on Commerce and Industry for follow-up (paragraphs 12 to 14 above refer).

23. The Administration has agreed to inform LegCo of its decision to revoke the Order once it is made (paragraph 20 above refers).

Advice sought

24. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
8 June 2011

**Subcommittee on Order made under Section 78B of the
Public Health and Municipal Services Ordinance**

Membership list

Chairman Hon Fred LI Wah-ming, SBS, JP

Members Hon WONG Yung-kan, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon Cyd HO Sau-lan
Hon Alan LEONG Kah-kit, SC

(Total : 7 Members)

Clerk Mrs Sharon TONG

Legal Adviser Miss Carrie WONG

Date 21 April 2011

**Subcommittee on Order made under Section 78B of the
Public Health and Municipal Services Ordinance**

Organizations which have given oral representation to the Subcommittee

1. Institution of Dining Art
2. Hong Kong, Kowloon, New Territories and Overseas Fish Wholesalers Association
3. The Marine Products Association
4. Hong Kong Japanese Restaurant Association
5. Hong Kong Imported Vegetable Wholesale Merchants Association Ltd.